

## Office Action Summary

**Application No.**

10/690,489

**Applicant(s)**

WHITSETT, MICHAEL

**Examiner**

M. Safavi

**Art Unit**

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on July 20, 2005 & August 12, 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on November 18, 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,489	10/21/2003	Michael Whitsett	W04-1041	5078
27257 7590 10/15/2007 KEATY PROFESSIONAL LAW CORPORATION THOMAS S. KEATY 2 CANAL STREET 2140 WORLD TRADE CENTER NEW ORLEANS, LA 70130			EXAMINER SAFAVI, MICHAEL	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 10/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Applicant's election of the invention of Group I and the species of Fig. 1C/22 and Fig. 14 in the reply filed on July 20, 2005 and August 12, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 5-15 and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species of the invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 20, 2005 and August 12, 2005.

Applicant has indicated claims 1-4, 16, and 18-28 as reading upon the elected species of the helical anchor Figures 1C/22 and the elected species of the drive means Figure 14. However, claim 1 does not read upon the elected species of the helical anchor Figures 1C/22 as the Fig. 1C/22 species of helical anchor does not possess "a cylindrical section, a drive shaft and a tapered transition section that joins the shaft to the cylindrical section". Further, claim 16 does not read upon the elected species of the helical anchor Figures 1C/22, (nor the elected species of the drive means Figure 14), as the Fig. 1C/22 species of helical anchor, (and the Fig. 14 species of drive means), does not possess "a rotary drive system for installing the helical that includes pile end portions that are shaped so that one end portion fits inside anchor and pile sections of an end portion of an adjacent pile section". Only the species of Fig. 23, the species of Fig. 24 and the species of Fig. 25 possess pile end portions that are shaped so that one end portion fits inside anchor as well as pile sections of an end portion of an adjacent

anchor or pile. Therefore, claims 1-4, 16, and 18-21 are withdrawn from consideration as to the merits along with claims 5-15 and 17. Thus, claims 1-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species of the invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 20, 2005 and August 12, 2005.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22, lines 7-89, "the pipe sections" lacks antecedent basis within the claim. It is therefore, not clear as to what "the pipe sections" defines.

Claim 25, line 7, "the pipe sections" lacks antecedent basis within the claim. It is therefore, not clear as to what "the pipe sections" defines. Line 15, "the joint non-annular surfaces" lacks antecedent basis within the claim. It is therefore, not clear as to what "the joint non-annular surfaces" defines. Line 16, "the drive" lacks antecedent basis within the claim. It is therefore, not clear as to what "the drive" defines. Line 18,

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"the connections" lacks antecedent basis within the claim. It is therefore, not clear as to what "the connections" defines. Lines 11-12, it is not understood as to what is being defined by "connectors that include enlarged sections that snugly fit together at the bores of the joints between respective pile sections". The specification does not appear clear and complete as to any such "connectors". What, for example, would be the "enlarged sections that snugly fit together"? And, how do such enlarged sections of a connector fit at "the bores of the joints between respective pile sections"? Lines 13-14, it is not understood as to what is being defined by "each joint being occupied by non-annular section of another pile section". How is a joint "occupied by...another pile section" particularly, if the pile section serve to form the joint with another pile section? Otherwise, what is "the joint" as recited in line 15 in claim 25?

Claim 26 appears dependent upon itself.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 25-28 are rejected under 35 U.S.C. 102(b) as being anticipated by**

**Moseley '814.** Moseley '814 discloses, a multi-section pile apparatus, comprising: a) a lowermost anchor that is configured to be driven into a soil mass by rotation, the

anchor having a shaft with a helically threaded vane portion (F) and an upper tapered transition section (C); a plurality of pile sections (A) that are connectable end-to-end at joints (a), the pipe sections and joints having hollow bores, a lowermost of the pile sections being connectable to the top of the tapered transition section of the anchor; connectors that include enlarged sections, (Fig. 7), that snugly fit together at the bores of the joints (a) between respective pile sections (A), each joint being occupied by non-annular section, (e.g., fasteners), of another pile section; wherein the "joint non-annular surfaces", (surfaces of the fasteners?), enable torque to be transmitted from "the drive" to the pile sections; and the connections including a connection between the lower end portion of one of the pile sections and an upper end portion of the anchor.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 22 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Turzillo '657 in view of Fujita and further in view of Baumann.**

Turzillo '657 discloses, Fig. 1, an pile apparatus 10 having "torque receiving" substantially cylindrical hollowed pile sections 11 with a lowermost pile section connectable to an upper end portion of helical anchor 11/19/20, and an internal rotary drive system formed of sections 16 connectable end to end and which fit within the pile

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sections with the drive including enlarged members 18 that fit at joints 12 between respective pile sections. Turzillo does not appear to specifically present 1) a pile apparatus having two or more pile segments together with the lowermost anchor nor 2) ends of the pile segments so as to form a non-annular or squared joint connection nor 3) a squared enlarged tool that snugly fits the bores at a non-annular or squared joint.

However, **1)** Turzillo discloses use of a requisite number of pile sections 11, col. 2, lines 5-9 and **2)** Fujita teaches forming pile sections of a circular or square cross sectional shape, Fig. 1 and Figs. 7 and 10 with upper pile segments fitting within lower pile segments and **3)** Baumann teaches a variety of cross sectional shapes for internally threaded coupling means, such as 50, including cylindrical and square, col. 6, lines 38-44.

Therefore, **1)** to have provided the Turzillo '657 pile system 10 with any number of pile sections 11, as for example three or more sections including two or more spaced joint positions, (with the lowermost section possessing a helical anchor 11/19/20), thus accounting for any depth of hole required, as well as **2)** form the ends of the pile segments so as to form a squared joint connection, thus realizing an effective resistance to compression or buckling, and further **3)** to have formed the Turzillo '657 coupling member or enlarged member 18 of a square cross section, thus realizing the advantages of such known cross section for connectors as for example, ease of turning, would have constituted an obvious expedient to one of ordinary skill in the art as taught by the Turzillo '657 disclosure in view of Fujita and further in view of Baumann. With

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such a modification the Turzillo '657 pile apparatus would possess a squared joint with squared enlarged tool that snugly fits the bores at a non-annular joint.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 22-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,814,525. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one having ordinary skill in the piling art to provide the drive of the invention of claims 1-19 of U.S. Patent No. 6,814,525 as a rotary drive as well as provide the helically threaded portion of the invention of claims 1-19 of U.S. Patent No. 6,814,525 as a helically threaded vane portion.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354**

M. Safavi  
September 10, 2007